

D.N.J. LBR 2016-1 COMPENSATION OF PROFESSIONALS

- (a) Except as set forth in (j)(3) below, this rule applies to any application for compensation and reimbursement of expenses from the bankruptcy estate by a professional person employed under 11 U.S.C. § 327.
- (b) The statement of services rendered and itemization of expenses in an application for compensation shall contain:
 - (1) A copy of the order of retention or authorization.
 - (2) A copy of any administrative order pertaining to interim compensation.
 - (3) The dates of services rendered.
 - (4) The services rendered on each date and the identity of the person rendering the service.
 - (5) The time spent in the rendering of each service. Computer time sheets showing the time units may be attached to the application.
 - (6) The normal billing rate for each person.
 - (7) At the end of the application, a total of the time spent by each individual performing services.
 - (8) A list of actual, not estimated, expenses, summarized by category, such as computer assisted research (which shall not be more than the actual cost), outgoing facsimile transmissions, (which shall not exceed \$1.00 per page, with no charge for incoming facsimiles), telephone charges, airfare, meals, lodging and photocopying (which shall not exceed \$.20 per page).
 - (9) A narrative explanation of the nature of the work performed and the results achieved. The narrative portion of the application shall inform the court of circumstances that are not apparent from the activity descriptions or that the applicant wishes to bring to the attention of the Court, including, but not limited to, special employment terms, billing policies, expense policies, voluntary reductions, reasons for the use of multiple professionals for a particular activity, or reasons for substantial time billed relating to a specific activity.
 - (10) **D.N.J. Local Form 3** shall be filed with each application for compensation in excess of \$10,000.
- (c) A copy of each application for allowances shall be served on the United States Trustee at the time of filing.
- (d) No Court appearance shall be required on applications for compensation unless an objection is filed and served.
- (e) *Professionals Retained on a Commission or Contingency Basis.* A professional retained on a commission or contingency basis is exempt from the requirements of subdivisions (b)(3), (4), (5), (6), (8) and (10).

- (f) *Appraisers.* Except where a flat fee is sought, the statement of services rendered and itemization of expenses in an application for fees or expenses for appraisers shall comply with subsection (b) of this rule. Appraisers shall include in the application the value of the appraised assets.
- (g) *Auctioneers.* An auctioneer shall be allowed those expenses approved by the Court and, in addition, commissions on net proceeds of sale, not to exceed: 10% of the first \$50,000; 7% of the next \$50,000; 5% of the next \$50,000; and 3% of all amounts above \$150,000.
- (h) *Interim Applications in Chapter 11 Cases.* Authorization for allowance of compensation at intervals more frequent than is permitted by 11 U.S.C. § 331, must be sought by a motion brought under the Court's *General Order Adapting Guidelines Governing Procedures for Payment of Interim Compensation and Reimbursement of Expenses to Professionals.*
- (i) *Final Applications in Chapter 11 Cases.* All applications for compensation shall be filed within 90 days after the order confirming the plan becomes a final order, or such compensation request shall be deemed waived.
- (j) *Special Requirements in Chapter 13 Cases.*
 - (1) *Debtor's Attorney, Generally.* If the fee of the attorney for the debtor disclosed pursuant to Fed. R. Bankr. P. 2016(b) exceeds \$3,500, the attorney for the debtor shall file and serve on the Chapter 13 trustee and the debtor an application for allowances not less than 7 days before the confirmation hearing.
 - (2) *Supplemental Fees.*
 - A. For supplemental fee applications of up to \$2,000 per application, the attorney for the debtor may submit **D.N.J. Local Forms 13 and 14**. Such applications shall be served on the Chapter 13 trustee and the debtor. If the supplemental fee application is for an amount in excess of \$1,000, the clerk shall issue notice of hearing as required by Fed. R. Bankr. P. 2002(a)(6) for a date on which Chapter 13 cases are heard.
 - B. Any other supplemental fee applications shall be filed in accordance with subsection (a) of this rule and shall be served on the Chapter 13 trustee and the debtor. If the supplemental fee application is for an amount in excess of \$1,000, the clerk shall issue notice of hearing as required by Fed. R. Bankr. P. 2002(a)(6) for a date on which Chapter 13 cases are heard.
 - C. Supplemental fee applications shall be submitted not more than once every 90 days.
 - (3) *Residential Mortgagee's Post-Petition Preconfirmation Attorney's Fees in Proof of Claim; Waiver of and Bar to Fee-Based Claims;*
 - A. A residential mortgagee's proof of claim, as initially filed or as amended, may include a claim for properly reimbursable attorney's fees and costs for post-petition preconfirmation attorney's services, in an amount not to exceed \$400.00 in lieu of the attorney filing an application for compensation under D.N.J. LBR 2016-1.

- B. Reimbursement hereunder is permitted *only* if the following conditions are met:
- (1) The residential mortgagee has actually incurred post- petition preconfirmation attorney’s fees and costs for properly reimbursable services of at least the amount sought in the proof of claim, and the services performed are separately enumerated therein;
 - (2) The claim is for services of an attorney admitted to practice before this Court pursuant to **D.N.J. LBR 2090-1**, who shall be identified in the proof of claim;
 - (3) The attorney’s fees will not be split or shared with any other entity; and
 - (4) The underlying mortgage documents provide for payment of attorney’s fees by the debtor under the circumstances of the debtor’s Chapter 13 case, and such fee is not contrary to 11 U.S.C. § 506(b) or applicable non-bankruptcy law.
- C. That portion of a residential mortgagee’s proof of claim seeking reimbursement of attorney’s fees hereunder shall be considered *prima facie* evidence of the validity and amount thereof in accordance with Fed. R. Bankr.P. 3001(f). Any party in interest may object to the allowance of the claim pursuant to 11 U.S.C. section 502(a), Fed. R. Bankr.P. 3007 and **D.N.J. LBR 3007-1**.
- D. The proof of claim must include the following statement in conjunction with any request for reimbursement of attorney’s fees: “This reimbursement is requested pursuant to D.N.J. LBR 2016-1(j)(3) and the claimant certifies that all the requirements for allowance of this fee have been met.”
- E. Any other D.N.J. LBR 2016-1 fee application for post-petition preconfirmation attorney’s services and costs on behalf of the residential mortgagee in a Chapter 13 case shall not include those services and costs allowed pursuant to this subsection (j)(3).
- F. Any and all post-petition preconfirmation claims based upon the attorney’s fees and costs incurred in a Chapter 13 case by the residential mortgagee which are not applied for pursuant to this subsection (j)(3) or more generally pursuant to D.N.J. LBR 2016-1, shall be deemed waived, and the residential mortgagee shall be estopped and barred from claiming such fees and costs at any time, whether in the Chapter 13 case or otherwise.

1997 Comment: Subparts (a) and (b), and (d) through (h) are former Local Rule 8(a) through (g); subpart (c) is former Local Rule 7(c); subpart (i) is the former Local Rule 25(c); subpart (j) is former Local Rule 33.

2001 Comment: Subpart (j) amended March 8, 2001; amendments include increasing the fee dollar amount from \$1,500.00 to \$2,000.00 and the addition of paragraphs (2), (3) and (4).

2004 Comment: Subsection (i) is amended to add reference to the Court’s ***General Order Adopting Guidelines Governing Procedures for Payment of Interim Compensation and Reimbursement of Expenses to Professionals*** which was implemented on March 31, 2003, and posted to the Court’s website, as one of four General Orders comprising the Court’s Chapter 11 Initiative. The General Orders and related Guidelines governing Chapter 11 practice in this District are referenced at **D.N.J. LBR 3016-1(e)**.

Subsection (j)(5) is added for Chapter 13 cases, exempting from the requirements of this Local Rule, a real estate broker or debtor's real estate attorney duly retained pursuant to [D.N.J. LBR 2014-1](#) and whose fees are approved in an order authorizing debtor to sell real property and pay certain professionals fees at closing, pursuant to [D.N.J. LBR 6004-1\(b\)](#).

2005 Comment: Subpart (j) is amended effective August 1, 2005 to increase the fee dollar amount from \$2,000.00 to \$2,500.00.

2006 Comment: This rule has been substantially amended with respect to information requirements relating to compensation requests in order to aid the court in determining whether the time spent in a case, or any portion thereof, was actual, reasonable and necessary. It emphasizes activity descriptions based upon general project categories. New subdivision (b)(10) requires professionals seeking allowance of fees in excess of \$10,000, except as provided in subsection (g), to submit a summary on [D.N.J. Local Form 3](#), which has been amended to provide greater substantive detail regarding the types of services rendered by the professional and with respect to which fees are sought. New subdivision (b)(9) expands upon the nature of the narrative portion of the application to the extent that it is intended to serve a heightened informational purpose with respect to expenses incurred and for which reimbursement is sought. Subdivision (j)(1) is amended to increase the fee dollar amount above which the debtor must file an application for allowances in Chapter 13 cases, from \$2,500 to \$3,500. Subdivision (j)(2) is amended to permit the attorney for the debtor in Chapter 13 cases to submit D.N.J. Local Forms [13](#) and [14](#) for supplemental fee applications of up to \$2,000 per application. Subdivision (j)(2)(c) is further amended to permit the filing of supplemental fee applications in Chapter 13 cases not more than once every 90 days. With the exception of subdivision (j) regarding special requirements concerning fees in Chapter 13 cases that will become effective in cases filed on or after August 1, 2006, this rule as amended shall apply to applications for compensation and expenses in cases filed on or after October 1, 2006. For cases filed before October 1, 2006, applicants may submit [D.N.J. Local Form 3](#) in accordance with this amendment at their option.

2008 Comment: Subsection (j)(3) is added for Chapter 13 cases to allow a residential mortgagee to include in a [proof of claim](#), attorney's fees in the amount of \$400.00 or less, for standard post-petition preconfirmation legal services rendered in the Chapter 13 case such as legal work relating to the filing of a proof of claim, reviewing the Chapter 13 plan, and filing an objection to the plan, without the need to file an application for allowance in accordance with D.N.J. LBR 2016-1. The amendment requires the residential mortgagee to specify the services performed in connection with the attorney's fees requested.

This subsection pertains to the procedural requirements for including in the proof of claim, a claim for post-petition preconfirmation attorney's fees and costs, which are deemed to have *prima facie* validity pursuant to Fed. R. Bankr.P. 3001(f) subject to the right of a party in interest to file an objection to the claim in the normal course pursuant to 11 U.S.C. section 502(a), Fed. R. Bankr.P. 3007 and [D.N.J. LBR 3007-1](#).

The residential mortgagee's attorney's fees may be, absent objection, added to the arrears to be cured through the plan pursuant to 11 U.S.C. § 1322(e). In cases in which it is proposed in a plan to cure a default with respect to a residential mortgage in which a foreclosure judgment has been obtained, the amount of attorney's fees that may be sought may be limited by New Jersey Court Rule 4:42-9. In cases in which the plan does not propose to cure a default, a residential mortgagee's proof of claim may include post-petition preconfirmation attorney's fees pursuant to 11 U.S.C. section 506(b), to the extent that the creditor is oversecured. In such cases, absent objection, the secured claim may be increased by the amount of the attorney's fees.

Reference: 11 U.S.C. § 327 Employment of professional persons; 11 U.S.C. § 328 Limitation on compensation of professional persons; 11 U.S.C. § 330 Compensation of officers; 11 U.S.C. § 504 Sharing of compensation; Fed. R. Bankr. P. 2013 Public Record of Compensation Awarded to Trustees, Examiners, and Professionals; Fed. R. Bankr. P. 2014 Employment of Professional Persons; [D.N.J. LBR 2014-1](#), 2016-1, [6004-1](#), [6005-1](#).